

July 1, 2016

Teresa Luna, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-158)
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140
Luna.Teresa@epa.gov

Re: Comments on Administrative Order on Consent, Docket No. CWA-10-2016-0087
and Consent Agreement and Final Order, Docket No. CWA-10-2016-0088,
regarding Respondents William C. Nelson and The Estate of Barbara Nelson

Dear Ms. Luna:

We, concerned citizens of King County, submit these comments in response to the United States Environmental Protection Agency's ("EPA's") Administrative Order on Consent ("AOC"), Docket No. CWA-10-2016-0087 and Consent Agreement and Final Order ("CAFO"), Docket No. CWA-10-2016-0088, regarding Respondents William C. Nelson and The Estate of Barbara Nelson. We urge EPA to consider carefully these comments and issue an AOC and CAFO that fully addresses the unpermitted discharges of fill material into waters of the United States, remedies the environmental harm and restores critical wetland functions, and imposes a significant civil penalty that is commensurate with the violation, creates a level playing field that does not place developers who comply with the law at a competitive disadvantage to developers who do not, and does not ignore ability to pay.

While the community appreciates EPA's effort, the community cannot support the proposed wetland and stream restoration because it bears little relationship to the degree and kind of harm to the environment and community it is supposed to remedy. Rather than requiring respondents to restore the jurisdictional waters that have been destroyed and the important water purification, flood control and habitat functions they once provided, EPA's proposed AOC and CAFO would (1) allow the respondents to leave the vast majority of unpermitted fill material in place, (2) does not require the respondents to restore the hydrology and hydrophytic vegetation necessary for the impacted wetlands and streams to provide the vital water purification and habitat functions they once provided for Endangered Species Act-protected salmon and other wildlife, and (3) does

not require the respondents to restore the floodwater storage capacity and critical flood control function the wetlands once provided for the community, particularly the residents located on the west side of 196th Avenue NE who have experienced severe flooding since the unpermitted fill was discharged. See photographs attached to the Letter to Dow Constantine date June 19, 2014, attached at Exhibit A. Unbelievably, EPA's proposed restoration is less comprehensive than a restoration plan respondents had submitted to EPA during the investigation. The plan respondents submitted included the removal of all gravel from the roads. In sharp contrast, the EPA plan allows the gravel and resulting environmental impacts, including downstream flooding to neighbors on the west side of 196th Avenue, NE, to stay in place. In short, EPA's proposed restoration fails to remediate the environmental damage to an important aquatic ecosystem that is adjacent to the Evans Creek Natural Area and Evans Creek, and is critically important to supporting healthy Puget Sound salmon runs and abating flood waters for the community.

Trout Unlimited of Bellevue and Issaquah, in a letter regarding this matter dated September 14, 2014, wrote: "As the county affirms, unpermitted work has occurred in wetlands and other aquatic areas along the Red Brick Road [196th Ave. NE], including work that directly and indirectly affects Evans Creek and its tributaries – known habitat for a number of coldwater fish species, including the ESA-protected Chinook Salmon. In addition to Chinook, the Washington State Priority Habitats and Species Report also lists the disturbed area as habitat for Coho and Kokanee Salmon as well as Cutthroat Trout." See Trout Unlimited Letter dated Sept. 14, 2014, attached as Exhibit B. Accordingly, Trout Unlimited requested "full restoration of critical areas and buffers disturbed by unpermitted clearing, grading and surfacing with impervious material." Id. Likewise, in a letter regarding this matter dated September 25, 2014, Sustainable Redmond similarly wrote: "many tons of fill have been dumped into the federally protected wetlands, and new roads and drainage ditches have been built in the sensitive areas around them, in clear violation of the law." See Sustainable Redmond Letter dated Sept. 25, 2014, attached as Exhibit C. Sustainable Redmond further observed that "[t]he wetland provides important habitat to endangered species of Chinook salmon as well as other protected species including Red tailed Hawkes, Great Blue Herons, Bald Eagles, Coho Salmon, Kokanee Salmon and Vaux's Swift. In addition, rare birds such as the American

bittern have been sighted using the wetland for nesting purposes. The filling and building activities have impacted wildlife and disrupted the hydrology of the wetland complex.”

Id. The fill also “contributes to increased flood risks in near-by properties as surrounding hydrology is affected.” Id. Accordingly, Sustainable Redmond also requested that “All illegal activity on the Gunshy Manor site must be fully remediated. The degraded wetlands areas and their buffers must be restored to their original state.” Id. The community agrees. EPA must require full restoration.

Likewise, the community cannot support the minimal civil penalty EPA proposes because it completely undermines specific and general deterrence, places reputable developers who comply with the law at a severe competitive disadvantage with developers who ignore the law, and ignores respondents’ ability to pay. The minor penalty EPA proposes is an insignificant fraction of the funds that respondents invested to discharge the unpermitted fill to support a high-end residential or light industrial development, and the value of the 124 acre tract of land in Redmond, WA where the unpermitted discharges occurred. The insignificant penalty sends a strong message to the regulated community that penalties for violations of federal environmental laws will be insignificant – even for developers – and are nothing more than an acceptable cost of doing business. EPA’s proposed restoration and civil penalty are arbitrary and capricious and an abuse of the Agency’s discretion. EPA should not enter into a sweetheart deal with these sophisticated respondents, who have been pursuing a high-end residential or light commercial development on this valuable 124 acre tract of land in Redmond, Washington.

I. EPA’s Proposed Restoration Confers Minimal Environmental Benefit and Bears Little Relationship to the Degree and Kind of Wrong It is Intended to Remedy

The remedy of restoration is an inherent part of the injunctive relief contemplated by the Clean Water Act and falls within EPA’s equitable jurisdiction. See 33 U.S.C. §§ 1251(a), 1319(b); Leslie Salt Pond Co. v. United States, 820 F. Supp. 478, 484 (N.D.Ca. 1992) (the United States is entitled to “injunctive relief which restores the property at the point of violation to essentially their pre-existing condition”), aff’d 55 F.3d 1388 (9th Cir. 1995). In selecting an appropriate restoration plan, EPA should consider whether: (1) the plan will confer maximum environmental benefits, (2) the proposed plan is achievable as

a practical matter, and (3) the proposed plan bears an equitable relationship to the degree and kind of wrong it is intended to remedy. United States v. Weisman, 489 F. Supp. 1331, 1343 (M.D. Fla. 1980), aff'd, 632 F.2d 891 (5th Cir. 1980); United States v. Sexton Cove, 526 F.2d 1293, 1301 (5th Cir. 1976).

The proposed restoration will confer limited environmental benefit and bears minimal relationship to the degree and kind of wrong it is intended to remedy, and does little to “restore the property at the point of violation to essentially their pre-existing condition.” Leslie Salt Pond, 820 F. Supp. at 484, aff'd 55 F.3d 1388 (9th Cir. 1995). The restoration is so lax that it undermines the Agency’s credibility. Given the glaring deficiencies and extreme leniency of the proposed restoration plan, is unlikely the plan would be entitled to deference if challenged.

“Conferring maximum environmental benefits” requires the restoration of pre-existing wetlands to return biological and ecological functions and values such as flood control, pollutant filtering, improvement of downstream water quality, and improvement of wildlife habitat to maximize the areas’ potential as a nesting and breeding place for the natural flora and fauna that existed prior to the disturbance. See United State v. Cumberland Farms of Connecticut, 647 F. Supp. 1166, 1182 (D. Mass. 1986), aff'd, 826 F.2d 1151 (1st Cir. 1987); United States v. Ciampitti, 615 F. Supp. 116, 123 (D.N.J. 1984) (“It stands to reason that the return of the wetlands area to its undeveloped state would confer maximum environmental benefits”), aff'd, 772 F.2d 897 (3d Cir. 1985); United States v. Bradshaw, 541 F. Supp. 884, 885-86 (D. Md. 1982) (maximum environmental benefit conferred by replacing “crucial ecological benefits which were eliminated by defendant’s unlawful action”). Requiring the removal of the fill material is the first and most minimal step necessary to begin restoring the site.

The work outlined in the proposed restoration plan will confer minimal environmental benefit. While the purpose of the plan should be to restore to the extent possible the acres of aquatic resources that existed prior to disturbance so that they will function for decades to come, the proposed plan does not even remotely accomplish that goal. Rather, the proposed restoration ignores the magnitude of the unpermitted fill activity, allows the respondent to leave the vast majority of unpermitted fill in place, thereby permanently depriving the environment and community of the water purification,

flood control and habitat functions these jurisdictional wetlands once provided. Aerial photographs, wetland delineation maps, wetland delineations and documents, including receipts for fill material and photographs show that thousands of cubic yards of fill material were discharged into jurisdictional waters without a permit. See Exhibit D, Notice of Application and SEPA Notice, King County Department of Permitting and Environmental Review, File No.: GRDE 14-0143. The fill was used to construct new roads that coincide with a high-end residential development plan for the site, approximately one mile of new drainage ditches and underground drainage to dewater the site, and significant areas of fill to create additional uplands, which would undoubtedly increase the value of the property for development and result in an even higher return on investment. Although receipts in the administrative record demonstrate that **at least 5,000 cubic yards of fill (crushed asphalt, sand and gravel) was discharged** at the site, **EPA's proposed restoration plan only requires the respondents to remove a mere 278 cubic yards of fill material** – a meager 5 percent of the fill – from a limited area known as the dirt “spur road” (the southeastern-most road that was created recently and extends into the wetland).

Equally disturbing is the fact that EPA is proposing to allow the respondents to leave in place thousands of cubic yards of unpermitted fill material that was used to construct 20 foot wide roads that are suitable to support a large residential development that respondents had been pursuing on this 124 acre tract of land in Redmond. While EPA is purporting to require the respondents to “narrow” the roads from a width of 20 feet to a width of 10 feet, the reality is that EPA is not requiring the respondents to narrow anything. Rather, EPA is proposing to allow the respondents to leave the massive volumes of fill material that were discharged to construct those 20 foot wide roads in place – specifically the additional 10 feet of road width – and simply have the respondents cover the excess road width with mulch and seed. This does nothing to reduce the road width or remove the impervious surface. It does nothing to restore the property at the point of violation to essentially its pre-existing condition. It does nothing to restore the hydrology. It does nothing to remedy the environmental harm and residential flooding. The only thing this illusory “restoration” does is mislead the public and protect respondents’ development investment for another day.

By allowing respondents to leave the extremely large volume of fill material used to construct the additional 10 feet of road width in place, EPA is failing to take the most minimal steps necessary to restore the pre-existing wetlands and return biological and ecological functions and values such as flood control, pollutant filtering, improvement of downstream water quality, and improvement of wildlife habitat to the site. While leaving the environmental damage unaddressed may be extremely cost-effective for the respondents and preserve respondent's significant road investment for future use, it does not restore the biological and ecological functions and confers minimal, if any, benefit on the environment or the community. EPA's characterization of this plan as a "restoration" is misleading to the public.

While we support requirements such as realigning one small section of one of the drainage ditches by adding a bend to a currently straight channel and planting native trees and shrubs in the vicinity of some roads and ditches, such requirements address only a tiny fraction of the environmental harm at this site. EPA is ignoring the vast majority of unpermitted discharges, including unpermitted fill material that was used to construct an underground drainage in Wetland C along Red Brick Road. Inexplicably, EPA has completely ignored the drainage field that was constructed in Wetland C. EPA's failure to require a restoration plan that will restore to the extent possible the acres of aquatic resources that existed prior to disturbance so that they will function for decades to come is inconsistent with the Clean Water Act and contrary to the public's interest.

A restoration plan should bear an equitable relationship to the degree and kind of wrong which it is intended to remedy. While a proper restoration plan will place a burden on the respondents, these sophisticated respondents have no one to blame but themselves for that burden. A restoration that requires the respondents to remove the fill material and restore the environmental values and functions that existed before the aquatic resources were destroyed is fair, necessary to restore the environmental benefits that are required under the CWA, achievable as a practical matter because the site is easily accessed, and equitable in light of the significance of the harm. Accordingly, the community respectfully requests that EPA require a restoration plan that will accomplish these minimal goals and satisfies the requirements of the Clean Water Act.

In addition, the community requests that EPA also make the following amendments to the CAFO and AOC. The community requests that EPA require respondents to place a restrictive environmental covenant on all wetlands, water courses and their buffer zones and restoration areas as an express condition precedent to the transfer or conveyance of any property interest in this site. Because 196th Avenue NE (historic Red Brick Road) is a registered historic landmark and has significant weight restrictions to protect its integrity, the community requests that EPA amend the CAFO and AOC to require that all trucks and equipment use for the restoration solely access the site from the entrance to the property located on Union Hill Road to prevent further damage to the historic brick road. This should have been required if there had been adequate coordination with the State Historic Preservation Officer. Regardless of the requirements of the nationwide permit, the community requests that EPA amend paragraph 4.8 of the CAFO and the AOC to declare that the cost of the restoration shall not be deductible for purposes of federal taxes, as EPA did for the civil penalty. It would be unconscionable for respondents to deduct the restoration costs from their taxes without violating the AOC.

II. The Insignificant Civil Penalty EPA Assessed Does Nothing to Deter these Respondents or Others From Committing Future Violations and Places Developers Who Follow the Law at a Competitive Disadvantage

EPA's proposed civil penalty is so low that it incentivizes developers to violate the law. The Clean Water Act expressly provides that "[a]ny person who violates [sections 301, 402 or 404] . . . and any person who violates any order issued by [EPA] under [section 309(a)], shall be subject to a civil penalty not to exceed [\$37,500, adjusted for inflation] per day for each violation." 33 U.S.C. § 1319(d). The main purposed of a civil penalty is to deter the violator and other from committing future violations. Tull v. United States, 481 U.S. 412, 422-23 (1987). A penalty should be "large enough to hurt; it should deter anyone in the future from showing a similar lack of concern with compliance." United States v. Environmental Waste Control, Inc. 710 F. Supp. 1172, 1244 (N.D. Ind. 1989), aff'd 917 F.2d 327 (7th Cir. 1990). The question for EPA to determine is not only the amount of the penalty that will capture the respondents' attention and force them to become concerned about their compliance with the Clean Water Act (specific deterrence), but also the amount that of penalty that will garner the

attention of the respondents' community, and thereby prevent others from acting similarly (general deterrence). EPA should impose a civil penalty that considerably exceeds what respondents and similarly situated persons – namely high-end residential and light industrial developers and commercial real estate investors like these respondents – might consider, and therefore absorb as a cost of doing business. See, e.g., www.nelsonlegacygroup.com.

EPA's proposed \$10,000 civil penalty in this case is so low that it completely undermines specific and general deterrence. The penalty is so meaningless that it creates a powerful incentive for developers and other members of the regulated community to ignore federal law and simply absorb the minor penalty as a cost of doing business. The penalty is a tiny fraction of the funds the respondents invested to create the roads and drainages that resulted in this enforcement action, is not commensurate with the magnitude of the discharges and harm, and does not take ability to pay into account. See, www.nelsonlegacygroup.com, www.4culture.org/2014/05/from-texaco-to-turkey-house-to-trader-joes-redmond-and-the-nelson-family/. If the volume of unpermitted fill is 5000 cubic yards, a \$10,000 civil penalty amounts to a meager \$2 fine for each cubic yard of fill and a \$10 per cubic yard fine if you make the unsupportable and false assumption that only 300 cubic yards were involved.

The insignificant penalty EPA is proposing also places reputable developers who comply with the Clean Water Act at a competitive disadvantage to developers who disregard the law to the detriment of the environment, the community, and the regulatory program. It is, quite simply, not fair or in the public's interest. EPA should not place compliant developers at a competitive disadvantage. EPA's proposed penalty is completely unsupported, arbitrary and capricious, will destroy any deterrent effect, and will impair the agency's credibility with the community and regulatory program. We request that EPA impose, at the very least, a \$150,000 penalty on William C. Nelson and a separate \$150,000 penalty on the Estate of Barbara Nelson.

The community appreciates EPA's willingness to initiate an enforcement action at this site. We petition EPA to reconsider and set aside the proposed AOC and CAFO, and require a restoration and civil penalty that restores the property at the point of violation to essentially their pre-existing condition consistent with these comments, actually confers a

benefit on the environment and community that has been seriously harmed by the discharges, is commensurate with the violation, and satisfies the requirements of the Clean Water Act. We also ask that you coordinate similar appropriate relief in the County's separate enforcement action that is currently proceeding. See King County Department of Permitting and Environmental Review, File No.: GRDE 14-0143 (comments closing on July 25, 2016). We stand ready to support EPA on an appropriate restoration plan and civil penalty.

Respectfully submitted,

/s/ Members of the Community – see attached signature pages

cc: Chan Pongkhamsing, EPA Region 10, CWA 404 Enforcement Coordinator
The Honorable Maria Cantwell
The Honorable Patty Murray
The Honorable Suzan DelBene
The Honorable Roger Goodman
The Honorable Larry Springer
Matthew Bennett, Regulatory Section Branch Chief, U.S. Army Corps of Engineers
Erik C. Stockdale, Section Manager, Shorelands and Environmental Assistance,
Washington State Department of Ecology
Patrick McGraner, Wetlands Specialist, Department of Ecology
Jim Unsworth, Director, Washington Department of Fish and Wildlife
Dow Constantine, King County Executive
Jon Pederson, King County, DPER Project Manager (File No. GRDE 14-0143)
Robert Metzger, President, Trout Unlimited's Bellevue-Issaquah Chapter
Robert Berg, Co-Chair, Sustainable Redmond

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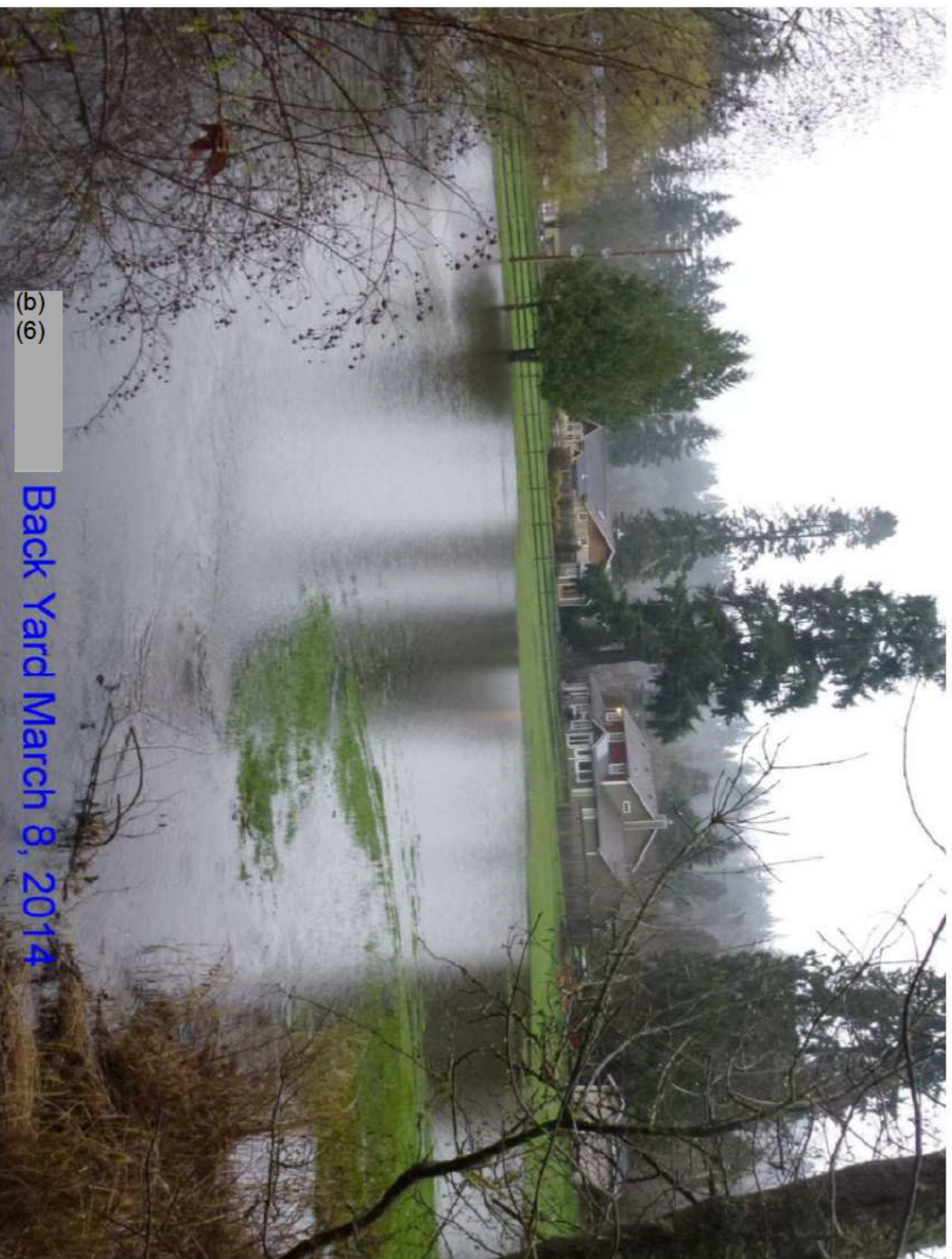
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Exhibit A

Figure 8: Residential Flooding to (b) (6)

(b) (6) Immediately Down Stream



(b) (6)

Back Yard March 8, 2014

Figure 9: Residential Flooding to

(b) (6)

Immediately Downstream



Exhibit B

Bellevue/Issaquah TROUT UNLIMITED



SEP 29 2014

September 25, 2014

The Honorable County Executive Dow Constantine
Chinook Building, 401 Fifth Avenue, Suite 800
Seattle, Washington 98104
kcexec@kingcounty.gov

RECEIVED
KING COUNTY EXECUTIVE OFFICE
TO: _____
DUE DATE: _____
AUTHOR: _____
SUBJECT: _____
ACTION

RESPONSE FOR EXEC. S/D

RESPOND FOR EXECUTIVE
REVIEWED BY _____

F.Y.I.

Subject: Restoration of Critical Habitat along the Red Brick Road

Dear Executive Constantine,

I am writing on behalf of the Bellevue-Issaquah chapter of Trout Unlimited to urge King County to require the repair of key coldwater fish habitat along the Red Brick Road (196th Ave NE between NE Union Hill Rd and SR-202). **Specifically, we would like the county to require full restoration of critical areas and buffers disturbed by unpermitted clearing, grading and surfacing with impervious material.**

Trout Unlimited's mission is to conserve, protect and restore North America's coldwater fisheries and their watersheds. Additionally, one of our current priorities is headwater protection. Small streams are the places where trout and salmon go to spawn, and adjacent wetlands are the best habitat for their fry. Together they are the building blocks that provide colder, higher water quality for downstream rivers.

With that in mind, we were troubled to hear of recent actions that led to King County Enforcement case ENFR14-0512. As the county affirms, unpermitted work has occurred in wetlands and other aquatic areas along the Red Brick Road, including work that directly and indirectly affects Evans Creek and its tributaries – known habitat for a number of coldwater fish species, including the ESA-protected Chinook Salmon. In addition to Chinook, the Washington State Priority Habitats and Species Report also lists the disturbed area as habitat for Coho and Kokanee Salmon as well as Cutthroat Trout.

In this case, it is the strong belief of Trout Unlimited that full restoration to a natural state is the best way to mitigate these environmental violations. Headwater protection is critical not only for the direct habitat functions these areas provide, but also for the significant effect that disruption of these areas has on downstream water quality and habitat.

Thank you for your consideration. If you have any additional questions or concerns, you may contact me at (b) (6) or by phone at (b) (6)

Respectfully,

Robert Metzger

President of Trout Unlimited's Bellevue-Issaquah Chapter

Exhibit C



Promoting Sustainability by Education, Advocacy and Community Events
Citizens and Neighbors for a Sustainable Redmond, P.O. Box 2194, Redmond, WA 98073

September 25, 2014

advance copy via email

The Honorable Dow Constantine
King County Executive
King County Chinook Building
401 Fifth Avenue, Suite 800
Seattle, WA 98104

The Honorable Kathy Lambert, District 3
King County Councilmember
King County Courthouse
516 Third Avenue, 12th Floor
Seattle, Washington 98104

Subject: Opposition to Proposed Gunshy Manor Development along the Red Brick Road

Sustainable Redmond is a grassroots organization with the mission of being a catalyst for moving Redmond's citizens, businesses, and local government toward sustainability. Therefore, we advocate transparency in City and County development processes, better public notice of development proposals and full community engagement throughout¹.

We wish to bring your attention to a proposed development (Gunshy Manor) on the Red Brick Road, which is a historical landmark in King County. The Red Brick Road (located on 196th Ave NE between SR 202 and NE Union Hill Road) is adjacent to the boundary of the City of Redmond and is an important historic and agricultural valley that preserves more than a mile of paved road from the original Yellowstone Trail, dating from 1913. The road runs through more than 100 acres of intact wetlands, some privately owned and some preserved as the Evans Creek Natural Area. It has come to our attention that King County is in the process of receiving pre-applications for a new development project along the road that will build 25 additional homes on property immediately adjacent to Evans Creek Natural Area.

There are a range of direct, indirect and cumulative environmental impacts which should be addressed in the process of a full SEPA review to include:

WETLAND PROTECTION

Evasion of County Wetland Protection Regulations: The owners of the subject property have been actively filling and channelizing a part of the Evans Creek wetland and building impervious surface roads in the wetland buffer for a number of years, without any permits and without a Farm Management Plan. This activity appears to be an attempt to evade environmental laws by providing County regulators with a fait accompli: land whose hydrological connection to the (now degraded) wetland has been severed, thus justifying proposals to reduce the wetland buffers required by law and enabling more houses to be built.

Violation of County Wetland Protection Regulations: The public record indicates that the county has received multiple complaints for several years regarding this activity. Until recently, these complaints have resulted in investigations that were closed with no violations found, despite eyewitness testimonials, photographs and direct on-site inspection. During this time many tons of fill have been dumped into the federally protected wetlands, and new roads and drainage ditches have been built in the sensitive areas around them, in clear violation of the law. Imagery of this activity is available on Google Earth and in satellite imagery contained in King County's own data bases. Until recently the county has done nothing to prevent this activity which also contributes to increased flood risks in near-by properties as surrounding hydrology is affected.

¹ In this regard, please see the attachment which assesses issues related to public process and transparency.

Enforcement of County Wetland Protection Regulations: Sustainable Redmond would appreciate an explanation from the County for why multiple inspections of the site during the past five years have found no evidence of wrongdoing. However, when the last formal complaint was received by your office several months ago, copying state and federal officials, suddenly a set of violations were discovered, as if they had happened the day before (please refer to ENFR14-0512).

Redress Requested: To remedy this situation, we are calling on the County to ensure that the wetland habitat and surrounding hydrology are fully restored to their original state, and that all of the roads that were illegally built in the wetland habitat and its legal buffer are removed.

HABITAT AND TREE PRESERVATION

Habitat Protection: Wetlands are a vital and dwindling habitat in King County, especially in the areas that have been most affected by urban sprawl. Sustainable Redmond believes that the Evans Creek Natural Area is worthy of stronger protection than the county has provided to date. The wetland provides important habitat to endangered species of Chinook salmon as well as other protected species including Red Tail Hawks, Great Blue Herons, Bald Eagles, Coho Salmon, Kokanee Salmon and Vaux's Swifts. In addition, rare birds such as the American Bittern have been sighted using the wetland for nesting purposes. The filling and building activities have impacted wildlife and disrupted the hydrology of the wetland complex. The quality of the wetland habitat could be further compromised by a centralized septic system proposed for the project that would be located near the wetland buffer.

Upland Tree Preservation and Landslide Risk: Based on the development plans provided to the local community by the developer, at least 10 acres of mature Douglas fir forest on the slopes of Union Hill will be cleared to make room for new houses. Sustainable Redmond is very concerned about the loss of trees on this scale, particularly as these forests provide important upland habitat to species that use the Evans Creek Natural Area. Further, these trees are located in a County-mapped "landslide hazard area" and landslide risk would be increased by the removal of the soil retention qualities of this tree cover.

INTENSIFICATION OF USE

Community Character and Cultural Impact: In addition to the environmental impact of this development, Sustainable Redmond would like the County to consider the broader impact of the project on the historic area and the community that lives there. The developer intends to use a method known as "clustering" to develop homes on one-acre lots, even though the area is zoned as RA-5. This practice is inappropriate in this particular location, as it does not meet any of the criteria established by the County Comprehensive Plan, and is entirely unaligned with the character of the Red Brick Road neighborhood. Building a gated community of 25 homes on 25 acres of allegedly developable land, including roads, sidewalks, street lights and septic fields, would irreversibly destroy the historically rural and agricultural character of the road and the valley. This is not sustainable development in any sense of the word.

Traffic: Last year, the King County Landmarks Commission issued Certificate of Appropriateness #1318, authorizing the developers to use the Red Brick Road as primary access, approving an additional 2,162 daily trips on the historic road. This is a road designed over a century ago, whose condition is already significantly degraded. The Red Brick Road is too narrow (18') and lacks proper shoulders to meet even the most basic safe design standards. (Any development along the Red Brick Road will require an exception to KCC 14.42.040, which requires developers to improve impacted roads to county design standards.) Because the road cannot be modified, the balance between safety and history must be accomplished by making every effort possible to limit traffic on the road. Developing the subject property at the zoned RA-5 level will reduce the projected increase in traffic volume by 80% since five homes could be built, rather than the 25 planned for in the proposed development.

In conclusion, Sustainable Redmond would like to ensure that any development that occurs in this area is environmentally and socially sustainable. To that end, we ask the County to assure the following:

- 1) All illegal activity on the Gunshy Manor site must be fully remediated. The degraded wetland areas and their buffers must be restored to their original state.
- 2) All new development must be performed within the legal guidelines established by the County for all of its citizens, with a transparent public process that includes all interested parties. This includes requiring a full SEPA assessment, as well as effective enforcement by County regulators of the full critical area buffers prescribed by law - including wetland and landslide hazard areas.
- 3) All new development must respect the established zoning. The County should reject any new proposals involving clustered development along the Red Brick Road.
- 4) The Certificate of Appropriateness #1318 issued by the King County Landmarks Commission should be revoked. All new development in this area must be reviewed to ensure that it does not add significant traffic to the already over-used Red Brick Road.

Thank you for your attention, and please feel free to contact Sustainable Redmond if there is anything we can do to assist in finding alternative solutions that will benefit all parties involved in this matter. We would like to become parties of record in this proceeding.

Respectfully,

(b) (6) Co-Chair
Sustainable Redmond

(b) (6) Secretary
Sustainable Redmond

Attachment: Assessment of Public Process and Transparency Regarding Gunshy Manor

Copy by email to:

Rhonda Berry	Chief of Operations, Office of the County Executive
Jeff McMorris	Chief of Staff, Office of Councilmember Kathy Lambert
John F. Starbard	Director, Permitting and Environmental Review, King County
Christie True	Director, Department of Natural Resources & Parks (DNRP)
Bob Burns	Assistant Director, DNRP
Julie Koler	Historic Preservation Officer, DNRP
Randy Sandin	Line Manager, Department of Permitting & Environmental Review (DPER)
Sheryl Lux	Line Manager, Code Enforcement, DPER
Molly Johnson	Managing Engineer, DPER
Jeri Breazeal	Code Enforcement Officer, DPER
Michael Szerlog	Manager, Aquatic Resources, U.S. EPA Region 10
Chan Pongkhamsing	CWA Section 404 Enforcement Coordinator, U.S. EPA Region 10
Jonathan Smith	North King County Regulatory Program Manager, US Army Corps of Engineers
Maia Bellon	Director, Washington State Department of Ecology
Erik Stockdale	Manager, Shorelands & Environmental Assistance, Washington Department of Ecology
Phil Anderson	Director, Washington State Department of Fish & Wildlife
Stewart Reinbold	Assistant Regional Habitat Program Manager, Washington Department of Fish & Wildlife
David Garland	Watershed Unit Supervisor, Water Quality Program, Washington Department of Ecology

Red Brick Road Community Neighbors

Assessment of Public Process and Transparency regarding Gunshy Manor

Preface: Sustainable Redmond has evaluated local government actions to date regarding the Gunshy Manor property in light of our mission to increase transparency, accountability and effectiveness. These are our findings.

1. Expanded Red Brick Road Usage

The Certificate of Appropriateness (COA) "approved" by the King County Landmarks Commission on November 19, 2013 on the recommendation of the King County Design Review Committee (a sub-committee of the Landmarks Commission) only screened broader environmental issues and violations of Federal regulatory provisions. Primacy in this proposed development clearly rests in federal statutes – the Clean Water Act and Endangered Species Act plus the US Fish and Wildlife Service National Wetlands Inventory Program in which the Army Corps of Engineers district office plays a regulatory role – and in County designation of wetland and endangered species supporting those Federal regulations. The King County Landmark and national historic status of the Red Brick Road is important from the local to the national level. This does not give the Landmark Commission the prerogative to subvert the rural community character built around this iconic, 100-year-old roadway and abdicate responsibility of their mission to "ensure that the historic places, material culture, and traditions which best reflect the region's 13,000 years of human history are preserved for future generations."

2. Standing of the Type II Certificate of Appropriateness Approval

The joint DNPR/DPER letter of August 4, 2014 addressing Community Concerns states that the COA was provided for "guidance" in the event that a development proposal was forthcoming². If it was only intended as an advisory opinion, it was premature to have gone through the COA process and the application should have been rejected. Correspondence between the neighborhood and county leadership reveals some ambiguity in the standing and purpose of the COA. Is it really informal guidance pending an actual development application or is it, per the November 22, 2013 COA document, the final decision to be "registered with the King County Recorder to run with the land" that is not now subject to appeal? It has all the appearance of the latter, especially because the County has stated in correspondence that the criteria in the COA will be used to evaluate any future development proposals of the Gunshy Manor property.

3. Transparency of Certificate of Appropriateness Approval

The process that led to COA approval appears to deliberately avoid the public notification process that would have brought some transparency to the proceedings. There was no notification to the community of either the fast-tracked Landmark Commission deliberations on November 19, 2013 or their subsequent decision so that public members could avail themselves of the 35 day appeal period. Granting of the COA was only made known to the community when revealed by the developer, 6 months after the fact. King County Code 20.62 states that full public notice will be given when a Type II certificate is under consideration³. This does not seem to be the case in this

² Because the Certificate of Appropriateness was not required when it was sought and **was issued only as guidance** for a then-unidentified development proposal, the Certificate does not need to be revoked or remanded. If and when a formal development application is submitted to DPER, the public will be notified and will have opportunity to comment and raise issues. Further, if and when a formal application is submitted, DPER will confirm with the Historic Preservation Officer that the specific proposal meets the criteria established in the Certificate of Appropriateness." Page 3, Paragraph 1 (Emphasis added)

³20.62.080 C4 The historic preservation officer shall mail notice of the hearing to the owner, the applicant, if the applicant is not the owner, and parties of record at the designation proceedings, not less than ten calendar days before the date of the hearing. No hearing shall be required if the commission, the owner and the applicant, if the applicant is not the owner, agree in writing to a stipulated certificate approving the requested alterations thereof. **This agreement shall be ratified by the commission in a public meeting and reflected in the**

instance. Without public notice, community members cannot become parties of record or know to watch meeting agendas (if promulgated) to inform themselves of development actions in their neighborhood. Neither can they seek redress through an appeals process.⁴ Further, there is an opaque quality to both the DRC decision process and any agreement between property owners and Landmark Commission that occurs out of the public eye. None of this suggests a local government that is interested in a transparent and accountable process.

4. Lax Enforcement of Federal Statutes reflected in King County Code

Despite a history of neighborhood complaints regarding destruction of federally-protected wetlands and habitat including county-designated sensitive areas over a period of approximately 5 years, the County did not initiate enforcement action until June 26, 2014 – by coincidence exactly a week after the community had expressed their concern in a letter to elected leadership in King County with copies to state and federal authorities. A letter to the property owner confirming violation of multiple King County Code provisions resulting from construction activities in environmentally critical areas and buffers was subsequently sent on August 7, 2014⁵ following a July 31, 2014 site visit that included an official from the Environmental Protection Agency. A distinctly disinterested attitude seemed to characterize code enforcement practices until this matter was elevated to elected officials. The prompt County leadership response to documented environmental concerns governed by Federal statute as raised by the Red Brick Road neighborhood is appreciated. Such extraordinary measures should not have been required to ensure regulatory compliance and enforcement actions should have been taken much earlier. Selective enforcement of this nature can easily be interpreted as a sign of favoritism toward certain parties – exactly the opposite of transparent and accountable government.

5. Future Public Engagement in Gunshy Manor Development Process

Opportunities for public comment on development proposals are embedded in arcane bureaucratic processes that communities may not learn about until it is too late for them to have their voices heard, much less acted upon by jurisdictions relied upon to guard the public trust. While public comment only is only sought in specific development situations, the sense of the community should also be honored as staff becomes aware of it and act to provide more transparency rather than less. Promising to notify the community about future opportunities to comment does not atone for perceptions that their views have been ignored in the past. Further, sale of the subject property to a third party can obviate assurances made by the current property owner, however positive they may be. A full and complete dialogue between the Red Brick Road community, County staff and private developers is in the interest of all concerned before decisions on the future of the area are finalized. It is inconceivable that the character of a community distinguished by a historic landmark like the Red Brick Road could be jeopardized in this fashion without a transparent process with full public input and a sense of community consent.

commission meeting minutes. If the commission grants a certificate of appropriateness, such certificate shall be issued forthwith and the historic preservation officer shall promptly file a copy of such certificate with the director. (Emphasis added.)

⁴ 20.62.110 Appeal procedure.

A. **Any person aggrieved by a decision of the commission** designating or rejecting a nomination for designation of a landmark or issuing or denying a certificate of appropriateness **may, within thirty five calendar days of mailing of notice of such designation or rejection of nomination, or of such issuance or denial or approval of a certificate of appropriateness appeal such decision in writing to the council.** The written notice of appeal shall be filed with the historic preservation officer and the clerk of the council and shall be accompanied by a statement setting forth the grounds for the appeal, supporting documents, and argument.

B. If, after examination of the written appeal and the record, the council determines, that: 1. An error in fact may exist in the record, it shall remand the proceeding to the commission for reconsideration or, if the council determines that: 2. the decision of the commission is based on an error in judgment or conclusion, it may modify or reverse the decision of the commission

⁵ Violation Code Enforcement Case ENFR14-0512 reflected in DPER notice letter of August 7, 2014.

Exhibit D



King County

Department of Permitting and Environmental Review

35030 SE Douglas Street, Suite 210
Snoqualmie, WA 98065-9266
206-296-6600 TTY Relay: 711
www.kingcounty.gov

Notice of Application and SEPA Notice Optional DNS/MDNS Process

(Type 1)

Project Name: Gunshy Grading Permit

File No.: GRDE14-0143

Applicant: Estate of Barbara J. Nelson
Attn. Buff Nelson Jr.
16508 NE 79th St
Redmond WA 98052

DPER Project Manager (Clearing & Grading): Jon Pederson
Phone No.: 206-477-0330
E-Mail: jon.pederson@kingcounty.gov

DPER SEPA Review: Kim Claussen, PPM III
Phone No.: 206-477-0329
E-Mail: Kimberly.claussen@kingcounty.gov

Engineer/Contact: ESM-Eric LaBrie
33400 8th Ave S, Suite 205
Federal Way WA 98003
253-838-6113

Date Application Filed: December 2, 2014
Date Determined Complete: December 30, 2014
Date of Mailing: June 30, 2016

Project Location: Parcel Nos.: 082506-9102, -9103, -9104, -9105, & 9012

Project Description: Permit to resolve grading (over 500 cubic yards) without a permit (Code Enforcement Case ENFR14-0512), which includes approximately 3,100 lineal feet of road width removal and restoration

Permit requested in this application: Clearing & Grading Permit

Environmental review is required and relevant environmental documents, including mitigation/restoration and farm plans, are available at the above address.

Consistency with applicable County plans and regulations: This proposal will be reviewed for compliance with all applicable King County codes including Roads Standards, Surface Water Design Manual, Zoning, Grading and Critical Areas Codes.

Other permits not included in this application, known at this time: N/A

King County Code requires notification of property owners within at least 500 feet of the project proposed above, so they can obtain additional information about the proposal and comment if they wish (KCC 20.20).

The Department of Permitting and Environmental Review (DPER) will issue an Environmental Threshold Determination pursuant to the State Environmental Policy Act (SEPA) on this application following a **21-day public comment period which ends on July 25, 2016**. The responsible official has a reasonable basis for expecting to issue a SEPA Determination of Non-Significance (DNS) on this project. As such, the optional DNS/MDNS notice process is being used pursuant to WAC 197-11-355. The project review process may incorporate or require mitigation measures regardless of whether an EIS is prepared.

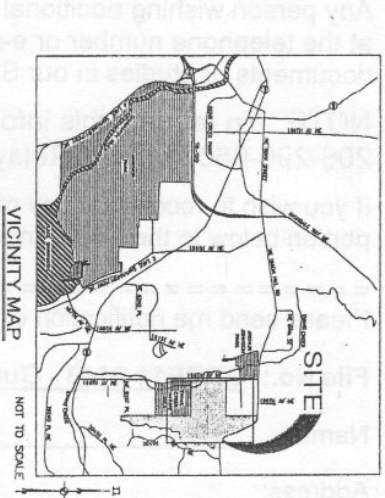
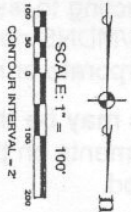
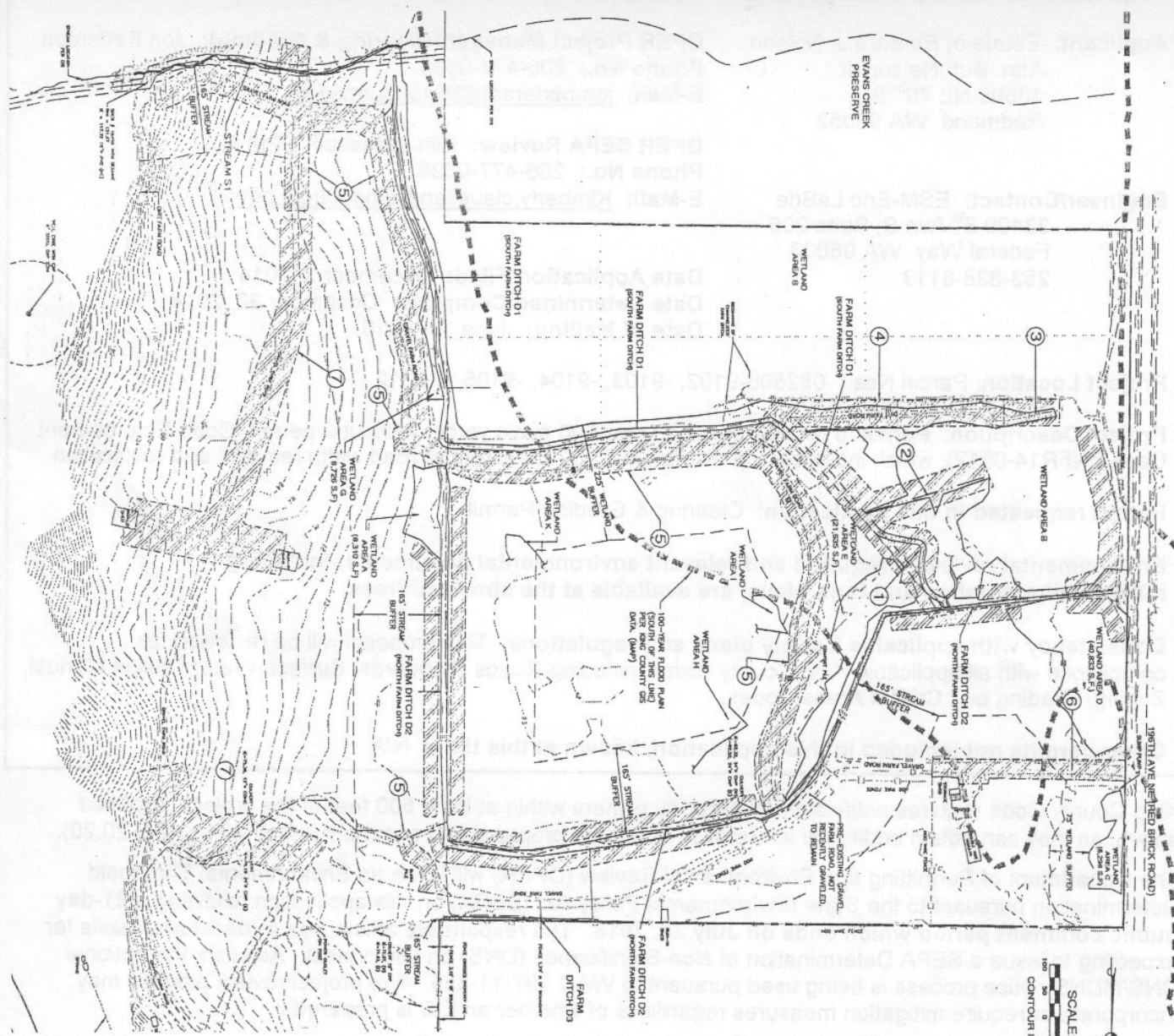
This may be the only opportunity to comment on the environmental impacts of the proposal. Written comments on this application must be submitted to DPER at the address above by the end of the comment period.

Any person wishing additional information on this proposed project should contact the DPER Project Manager at the telephone number or e-mail listed above. You may also review the application and any environmental documents or studies in our Snoqualmie office.

NOTE: To request this information in alternative formats for people with disabilities please call 206-296-6600 or TTY Relay: 711.

If you wish to receive a copy of the SEPA Threshold Determination on this application, complete and return the portion below to the Department of Permitting and Environmental Review at the address listed above.

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WORK DONE WITHOUT ALLEGEDLY REQUIRED
COUNTY CRITICAL AREAS PERMITS
(KING COUNTY DPER JENR14-0512)

- STRAIGHTENING PORTION OF EXISTING FARM DITCH D1
 - STRAIGHTENING EXISTING LATERAL FARM DITCH WITHIN WETLAND B
 - PLACEMENT OF GRAVEL AND SOIL ON PRE-EXISTING CORRECT SURFACED FARM ROAD WITHIN CRITICAL AREA BUTTER
 - PLACEMENT OF GRAVEL AND SOIL ON PRE-EXISTING CORRECT SURFACED FARM ROAD WITHIN CRITICAL AREA BUTTER
 - PLACEMENT OF GRAVEL ON PRE-EXISTING DIRT FARM ROAD (AND ADJUTING EDDGE) WITHIN CRITICAL AREA BUTTER
 - CONSOLIDATION OF PRE-EXISTING GRAVEL OVERLAY AND PRE-EXISTING GRAVEL FARM ROAD
 - PLACEMENT OF GRAVEL ON PRE-EXISTING DIRT FARM ROAD OUTSIDE OF CRITICAL AREA BUTTERS
- THE HATCHED AREA INDICATES SCOURING AND GENERALLY MATCHES OVERSTATED AREAS OF (1) WORK DONE WITHOUT ALLEGEDLY REQUIRED COUNTY CRITICAL AREAS PERMITS, OR (2) THE PROPERTY OWNER'S PROPOSED MITIGATION/RESTORATION WORK AND PLANNED VOLUNTARY COMBINATION OF ELEMENTS OF (1) AND (2).

OWNERS

THE ESTATE OF BARBARA J. NELSON AND THE NCH
C/O WILLIAM C. NELSON, JR.
10000 RIVERVIEW DRIVE
RENO, NV 89522

SITE DATA

KING COUNTY ASSESSORS PARCEL NUMBER: 082309-4103
-4104
-4105
-4106
-4107
-4108
-4109
-4110
-4111
-4112

ADDRESS: 7240 196TH AVE NE
REDMOND, WA 98053
ZONING: RA-5
LAND USE: FARMING AND RECREATION
CRITICAL AREAS: PURSUANT TO KING COUNTY CODE CHAPTER 21A.24, ARE DEPICTED HEREIN AS DETERMINED BY TALASKA ASSOCIATES, LLC, 24 2015 AND SUBMITTED BY ESM CONSULTING, LLC.

WETLAND AND CONSULTANT

TALASKA ASSOCIATES
10020 BARN CREEK RD. NE
WOODBRIDGE, WA 98077

HORIZONTAL DATUM

146 OF PLATS, PAGES 77 THROUGH 89, UNDER
RECORDING NO. 870101020.

BASIS OF BEARING

N 0°14'27.1" E FOR THE PLAT OF "TOWN-SHIRT ROADS" AS
SHOWN ON PLAT NO. 870101020, THE QUARTER CORNER OF
SECTION 45, T34N, R10E, AND THE QUARTER CORNER OF
SECTION 46, T34N, R10E, ARE DEPICTED HEREIN.

BASIS OF VERTICAL DATUM:

BRANCH MARK COG 9157.7' DAVENPORT BRANCH DASH
LOCATION SET IN CENTER OF 4.5 FOOT WIDE CONCRETE
STEP AT THE NORTH END OF HISTORIC BRICK ROAD.
NAD 83, 1988 ADJUSTED MEAN SEA LEVEL
ELEVATION = 84.32'

TEMPORARY BENCHMARKS:

TBM1000-REBAR AND CONTROL CIP 81.54'±
TBM1002-PIPE NAIL AND WISHER, 81.84'±

SHEET NO. DESCRIPTION

- MIT-01 MITIGATION/RESTORATION PLAN - COVER SHEET
- MIT-02 MITIGATION/RESTORATION PLAN - DITCHES
- MIT-03 MITIGATION/RESTORATION PLAN - STAIR FARM ROAD
- MIT-04 MITIGATION/RESTORATION PLAN - LOOP FARM ROAD
- MIT-05 MITIGATION/RESTORATION PLAN - FARM DITCH D2
- MIT-06 MITIGATION/RESTORATION PLAN - GRAVEL FARM ROAD
- MIT-07 MITIGATION/RESTORATION PLAN - GRAVEL FARM ROAD
- MIT-08 MITIGATION/RESTORATION PLAN - FARM ROADS